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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,385	04/15/2004	Nathan H. Faulkner	089339-0392	8454

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EXAMINER

NGUYEN, PHUONGCHI T

ART UNIT PAPER NUMBER

2833

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/825,385	Applicant(s) FAULKNER, NATHAN H.	
	Examiner Phuongchi Nguyen	Art Unit 2833	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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DETAILED ACTION

1. Applicant's Remark of April 29, 2005 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by F.C Johnston et al (US3004097).

In regards to claim 1, F.C Johnston et al discloses (figure 8) an elbow stack for connecting two busway sections (73, 74) at an angle other than 180^0 , the elbow stack (figure 2) comprising a first splice plate (49) configured to define a first bore (forming on 49, where 54 going through); at least one insulator assembly (36, 36a, 36b) configured to define a second bore (forming on 36, 36a, 36b; where 37 going through), with

the assembly (36, 36a, 36b) having a first connector end (top end parallel to numeral 49) and a second connector end (vertical end adjacent to numeral 36), wherein one end (top end parallel to numeral 49) is not parallel to the other end (vertical end adjacent to numeral 36) (figure 2);

a second splice plate (46) configured to defined a third bore (forming on 46, where 37 going through); and at least one fastener (54) disposed within the first (bore forming on 49), second (bore forming on 36, 36a, 36b) and third bores (forming on 46), where the fastener (54, 51) is configured to force the insulator assembly (36, 36a, 36b) (which is) positioned between the first (49) and second splice plates (46), into contact with the busway sections (73, 74).

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In regards to claim 5, F.C Johnston et al discloses (figure 2) the elbow stack including at least one additional insulator assembly (36, 36a, 36b) positioned between the two splice plates (49, 46).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6, 8-13, 15-18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulkner et al (US5760339) in view of F.C Johnston et al (US3004097).

In regards to claim 1, Faulkner et al discloses (figure 7B) an elbow stack for connecting two busway sections (18, 18), the elbow stack comprising a first splice plate (155) configured to define a first bore (160); at least one conductor/insulator assembly (152+154) configured to define a second bore (161), with the assembly (152+154) having a first connector end (horizontal end) and a second connector end (vertical end), wherein one end (horizontal end) is not parallel to the other end (vertical end); a second splice plate (156) configured to defined a third bore (162); and at least one fastener (158+159) disposed within the first (160), second (161) and third bores (162), where the fastener (158+159) is configured to force the conductor/insulator assembly (152+154), positioned between the first (155) and second splice plates (156), into contact with the busway sections (18, 18). Faulkner et al lacks an elbow stack for connecting two-busway section at an angle other than 180°. However, F.C Johnston et al teaches (figure 8) an elbow stack for connecting two busway sections (73, 74) at an angle other than 180°. It would have been obvious to one having ordinary skill at the time the invention was made to modify the

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connection of elbow stack of Faulkner et al by having a angle connection as taught by F.C.

Johnson et al to connect conveniently the busway sections in any direction.

In regards to claims 2 and 9, Faulkner et al discloses the elbow stack wherein the conductor/insulator assembly (152+154) comprises, in order, a first conductor plate (152), a planar shaped insulator plate (154) and a second conductor plate (another 152), with each plate defining a part of the second bore (161). Faulkner et al lacks a polygonal insulator plate. It would have been an obvious matter of design choice to modify change the shape of insulator plate of Faulkner et al to be a polygonal plate; since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. in re Rose, 105 USPQ 237 (CCPA 1955).

In regards to claims 3 and 10, Faulkner et al discloses the elbow stack including a grommet (170) mounted in the second bore (161), with the grommet (170) configured with a throughbore coaxial with the second bore (161).

In regards to claims 4, 11 and 16, Faulkner et al discloses the elbow stack including an insulator sleeve (170) disposed on the fastener (158+159) to insulate the fastener (158+159) in the plurality of bores (160, 161, 162).

In regards to claims 5, 12 and 17, Faulkner et al discloses the elbow stack including at least one additional conductor/insulator assembly (152+154) positioned between the two splice plates (155, 156).

In regards to claims 6, 13 and 18, Faulkner et al discloses the elbow stack including a spacer (169) positioned between each conductor/insulator assembly (152+154).

In regards to claims 8, 15 and 20, Faulkner et al discloses the elbow stack including a cover (115) configured to enclose at least a portion of the elbow stack (figure 5B).

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5. Claims 7, 14 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulkner et al (US5760339) in view of F.C Johnston et al (US3004097) applied as claims 1, 9, and 16 above, and further in view of Hicks, Jr. et al (US4728752).

In regards to claims 7, 14 and 19, Faulkner et al discloses (figure 7B) the elbow stack wherein the fastener (158+159) comprises a nut (159) and bolt (158). Faulkner et al lacks a nut receptacle to accept the nut from preventing rotation. However, Hicks, Jr. et al teaches a nut receptacle (51) configured to accept the nut (51) and prevent rotation of the nut (column 4, lines 19-22). It would have been obvious to one having ordinary skill at the time the invention was made to provide on the elbow stack of Faulkner et al by having a nut receptacle as taught by F.C. Johnson et al to tighten the bolt and nut to the system in a good connection.

Response to Argument

6. Applicant's argument that "Johnston does not teach or disclose the second and third bore as required in claim 1 of the present applicant nor does Johnston provide a fastener that extends through each of the splice plates and insulator assemblies...the fastener 54 does not pass through the elements listed by the Examiner" is not deemed persuasive. Claim 1 recites "at least one fastener (54) *disposed within*...", not that the fastener must extend through or pass through each of the first, second and third bores.

7. Applicant argues that "Johnson does not discloses a single fastener passing through the first and second splice plates and insulator assemblies..." This is not deemed persuasive because Claim 1 recites "the at least one fastener is configured to force the insulator assembly (which is) positioned between the first and second splice plates into contact with the busway sections"; not that the "fastener is passing through the first and second splice plates and insulator assemblies".

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8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the connection of elbow stack of Faulkner et al is modified by having a connecting two-busway section at an angle other than 180° as taught by F.C. Johnson et al for connecting conveniently the busway sections in any direction.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchi Nguyen whose telephone number is (571) 272-2012. The examiner can normally be reached on 8:00AM-4:00PM.

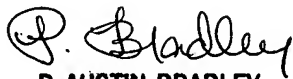
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext 33. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PCN

July 11, 2005


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